

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

WILLIAM MISIEWICZ,

v.

Plaintiff,

NEVADA DEPARTMENT OF
CORRECTIONS, *et al.*,

Defendants.

Case No. 2:22-cv-01180-RFB-NJK

ORDER

Plaintiff William Misiewicz brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at High Desert State Prison. ECF No. 6. On August 21, 2023, this Court issued a screening order dismissing the complaint without prejudice and with leave to amend within 60 days. ECF No. 12. The Court warned Misiewicz that the action could be dismissed if he failed to file an amended complaint by that deadline. *Id.* at 11. That deadline expired and Misiewicz did not file an amended complaint, or otherwise respond to the Court's order.

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. Thompson v. Hous. Auth. of City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its

1 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
 2 cases on their merits; and (5) the availability of less drastic alternatives. See In re
 3 Phenylpropanolamine Prod. Liab. Litig., 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting Malone,
 4 833 F.2d at 130.

5 The first two factors, the public’s interest in expeditiously resolving this litigation and the
 6 Court’s interest in managing its docket, weigh in favor of dismissal of Misiewicz’s claims. The
 7 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
 8 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading ordered
 9 by the court or prosecuting an action. See Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976).
 10 The fourth factor—the public policy favoring disposition of cases on their merits—is greatly
 11 outweighed by the factors favoring dismissal.

12 The fifth factor requires the Court to consider whether less drastic alternatives can be used
 13 to correct the party’s failure that brought about the Court’s need to consider dismissal. See Yourish
 14 v. Cal. Amplifier, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic
 15 alternatives *before* the party has disobeyed a court order does not satisfy this factor); accord
 16 Pagtalunan v. Galaza, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive
 17 force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives
 18 prior to disobedience of the court’s order as satisfying this element[,]” i.e., like the “initial granting
 19 of leave to amend coupled with the warning of dismissal for failure to comply[,]” have been
 20 “eroded” by Yourish). Courts “need not exhaust every sanction short of dismissal before finally
 21 dismissing a case, but must explore possible and meaningful alternatives.” Henderson v. Duncan,
 22 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and
 23 unless Misiewicz files an amended complaint, the only alternative is to enter a second order setting
 24 another deadline. But the reality of repeating an ignored order is that it often only delays the
 25 inevitable and squanders the Court’s finite resources. The circumstances here do not indicate that
 26 this case will be an exception: there is no hint that Misiewicz needs additional time or evidence
 27 that he did not receive the Court’s order. Setting another deadline is not a meaningful alternative
 28 given these circumstances. So the fifth factor favors dismissal.

1 **II. CONCLUSION**

2 Having thoroughly considered these dismissal factors, the Court finds that they weigh in
3 favor of dismissal.

4 IT IS THEREFORE ORDERED that this action is dismissed without prejudice based on
5 Misiewicz's failure to file an amended complaint in compliance with this Court's August 21, 2023,
6 order. The Clerk of Court is directed to enter judgment accordingly and close this case. No other
7 documents may be filed in this now-closed case. If Misiewicz wishes to pursue his claims, he must
8 file a complaint in a new case.

9 IT IS FURTHER ORDERED that Misiewicz's application to proceed *in forma pauperis*
10 (ECF No. 8) is denied as moot.

11 IT IS FURTHER ORDERED that Misiewicz may move to reopen this case and vacate the
12 judgment by filing a motion for reconsideration of this order. In this motion, Misiewicz is required
13 to explain what circumstances delayed him from paying the filing fee or filing the application to
14 proceed in forma pauperis. If the Court finds there to be good cause or a reasonable explanation
15 therein, the Court will reopen the case and vacate the judgment.

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18 DATED: January 19, 2024.

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RICHARD F. BOULWARE, II
30 UNITED STATES DISTRICT JUDGE